

Dale M. Cendali  
Johanna Schmitt  
Joshua L. Simmons  
Brian Leary  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
dale.cendali@kirkland.com  
johanna.schmitt@kirkland.com  
joshua.simmons@kirkland.com  
brian.leary@kirkland.com

*Attorneys for Plaintiff Fox News Network, LLC*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

FOX NEWS NETWORK, LLC,

Plaintiff,

- against -

TVEYES INC.,

Defendant.

Case No. 1:13-cv-05315-AKH

ECF Case

**PLAINTIFF FOX NEWS NETWORK, LLC'S  
NOTICE OF MOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that, upon the accompanying memorandum of law in support of this motion and the accompanying declarations, Plaintiff Fox News Network, LLC (“Fox News”) will move this Court, before the Honorable Alvin K. Hellerstein, Judge of the United States District Court for the Southern District of New York, at the United States District Courthouse, located at 500 Pearl Street, New York, New York 10007, at a time and place to be scheduled by this Court, for an order pursuant to Federal Rule of Civil Procedure 56 granting Fox News summary judgment on its three claims:

1. Fox News’ First Claim (Copyright Infringement);
2. Fox News’ Second Claim (Hot News Misappropriation); and
3. Fox News’ Third Claim (State Law Misappropriation).

Fox News also will move this Court for an order dismissing TVEyes’ remaining defenses in this case:

1. TVEyes’ First Defense (Failure to State a Cause of Action);
2. TVEyes’ Third Defense (Fair Use); and
3. TVEyes’ Eighteenth Defense (Preemption).<sup>1</sup>

Pursuant to Rule 2.C. of the Individual Rules of the Honorable Alvin K. Hellerstein, Fox News’ Table of Declarations and Exhibits is attached hereto as **Exhibit A**.

---

<sup>1</sup> On April 7, 2014, the Court struck the remaining defenses from TVEyes’ Answer. Discovery Hr’g Tr. 22:10–12, Apr. 4, 2014 (“So what we have here is: First defense, failure to state a claim; the third defense, fair use; and the eighteenth defense, preemption of the state claims.”).

Dated: New York, New York  
June 26, 2014

/s/ Dale M. Cendali

Dale M. Cendali  
Johanna Schmitt  
Joshua L. Simmons  
Brian Leary  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
dale.cendali@kirkland.com  
johanna.schmitt@kirkland.com  
joshua.simmons@kirkland.com  
brian.leary@kirkland.com

Attorneys for Plaintiff  
Fox News Network, LLC

**EXHIBIT A**

**TABLE OF DECLARATIONS AND EXHIBITS**

- Declaration of Jason Villar In Support of Plaintiff Fox News Network, LLC's Motion for Summary Judgment, dated June 26, 2014, which attaches Exhibits 1–12
- Declaration of Sharri Berg In Support of Plaintiff Fox News Network, LLC's Motion for Summary Judgment, dated June 26, 2014, which attaches Exhibits 13–20
- Declaration of Timothy Carry In Support of Plaintiff Fox News Network, LLC's Motion for Summary Judgment, dated June 23, 2014
- Declaration of Jeremy Steinberg In Support of Plaintiff Fox News Network, LLC's Motion for Summary Judgment, dated June 23, 2014, which attaches Exhibit 21
- Declaration of Andrew Williams In Support of Plaintiff Fox News Network, LLC's Motion for Summary Judgment, dated June 26, 2014, which attaches Exhibits 22–27
- Declaration of Elizabeth Ashton In Support of Plaintiff Fox News Network, LLC's Motion for Summary Judgment, dated June 26, 2014, which attaches Exhibits 28–36
- Declaration of Jay Wallace In Support of Plaintiff Fox News Network, LLC's Motion for Summary Judgment, dated June 26, 2014, which attaches Exhibits 37–57
- Declaration of Jeff Misenti In Support of Plaintiff Fox News Network, LLC's Motion for Summary Judgment, dated June 26, 2014, which attaches Exhibits 58–63
- Declaration of Caley Cronin In Support of Plaintiff Fox News Network, LLC's Motion for Summary Judgment, dated June 26, 2014
- Declaration of Joshua L. Simmons, Esq. In Support of Plaintiff Fox News Network, LLC's Motion for Summary Judgment, dated June 26, 2014, which attaches Exhibits 64–124